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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 855

CONGRESS OF INDUSTRIAL ORGANIZATIONS, an Unincorporated Association; PHILIP MURRAY, Individually and as President of said Congress of Industrial Organizations; ALABAMA STATE INDUSTRIAL UNION COUNCIL, an Unincorporated Association; CAREY HAIGLER, Individually and as Secretary of said Alabama State Industrial Union Council; UNITED STEELWORKERS OF AMERICA, an Unincorporated Association; DAVID McDONALD, Individually and as Secretary-Treasurer of said United Steelworkers of America; INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, an Unincorporated Association; REID ROBINSON, Individually and as President of said International Union of Mine, Mill & Smelter Workers; TEXTILE WORKERS UNION OF AMERICA, an Unincorporated Association; EMIL RIEVE, Individually and as President of said Textile Workers Union of America; LOCAL UNION No. 1015 of the United Steelworkers of America, an Unincorporated Association; HOYT BRANT, Individually and as President of said Local Union No. 1015; LOCAL UNION NO. 2971 of the United Steelworkers of America, an Unincorporated Association; WILLIAM NATHAN, Individually and as President of said Local Union No. 2971; LOCAL UNION NO. 2382 of the United Steelworkers of America, an Unincorporated Association; R. C. SCRUGGS, Individually and as President of said Local Union No. 2382, *Petitioners*,

vs.

ROBERT E. McADORY, as Solicitor of Jefferson County, Alabama, and HOLT McDOWELL, as Sheriff of Jefferson County, Alabama.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

LEE PRESSMAN,
Washington, D. C.;
CRAMPTON HARRIS,
Birmingham, Alabama;
FRANK DONNER,
Washington, D. C.;
Attorneys for Petitioners.

INDEX

TABLE OF CASES

OTHER AUTHORITIES

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vs.

ROBERT E. McADORY, as Solicitor of Jefferson County, Alabama, and HOLT McDOWELL, as Sheriff of Jefferson County, Alabama.

BRIEF FOR PETITIONERS

OPINION BELOW

The opinion of the court below (R. 220) is reported in 20 So. (2d) 40, and was filed on December 7, 1944.

STATEMENT AS TO JURISDICTION

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237-b, 28 U.S.C.A., Section 344-b.

The case puts in question the validity of Sections 7 and 16 of the Bradford Act upon the ground that such sections on their face and as construed by the Supreme Court of Alabama are repugnant to the Constitution of the United States and in particular to the Fourteenth Amendment and the First Amendment thereto as well as Article VI. The decision of the Alabama Supreme Court upheld the validity of the sections in question. The case was finally disposed of by the Supreme Court of the State of Alabama on December 7, 1944, when it entered its order affirming the determination of the Alabama Circuit Court. Every possible remedy within the state has been exhausted. The Federal questions were appropriately raised at all stages in the proceeding. The complaint challenged each of the sections involved herein as violative of the Federal Constitution. Federal questions were briefed and argued before the state Supreme Court and that court passed upon the Federal questions in affirming its prior opinion in the case of *Alabama State Federation of Labor, et al.* v. *McAdory*, which is now before this Court, No. 588, this Term.

THE RELEVANT PROVISIONS OF THE STATUTE INVOLVED

Section 7. Every labor organization functioning in Alabama shall within sixty days after the effective date of this Act, and every labor organization hereafter desiring to function in Alabama shall, before doing so, file a copy of its constitution and its by-laws and a copy of the constitution and by-laws of the national or international union, if any, to which the labor organization belongs, with the Department of Labor, but this provision shall not be construed to require the filing of any ritual relating solely to the initiation or reception of members. All changes or amendments to the constitution or by-laws, local, national or internationa adopted subsequent to their original filing must be filed the Department of Labor within thirty days after the on thereof.

Every labor organization functioning in the State of Alabama and having twenty-five or more members in any calendar year shall annually on or before February first in the next succeeding calendar year file with every member of their respective labor organizations and with the Director of the Department of Labor a report in writing showing the facts

hereinafter in this section provided as of the close of business on the thirty-first day of December next preceding the date of filing. Such report shall be filed by the secretary or business agent of such labor organization and shall show the following facts: (1) The name of the labor organization; (2) the location of its principal office and its offices in Alabama; (3) the name of the president, secretary, treasurer and other officers, and business agents, together with the salaries, wages, bonuses, and other remuneration paid each, and post office address of each; (4) the date of regular election of officers of such labor organization; (5) the number of its paid-up members; (6) a complete financial statement of all fees, dues, fines, or assessments levied and/or received, together with an itemized list of all disbursements, with names of recipients and purpose therefor, covering the preceding twelve (12) months; (7) a complete statement of all property owned by the labor organization, including any monies on hand or accredited to such labor organization, which said report shall be duly verified by the oath of the president, secretary, or some other regularly selected and acting officer of such labor organization, having knowledge of the facts therein stated. It shall be the duty of the Director of Labor to cause to be printed and to make available to the public forms for making such report. At the time of filing each such report it shall be the duty of every such labor organization to pay the Director of Labor an annual fee therefor in the sum of two dollars.

The Director of Labor shall receive, file and index the reports provided for in this section of this Act. The records provided for herein shall be public records and shall be made available by the Director of Labor in his office to the Governor of Alabama for examination.

It shall be unlawful for any fiscal or other officer or agent of any labor organization to collect or accept payment of any dues, fees, assessments, fines or any other monies from any members while such labor organization is in default with respect to filing the annual report required in this section.

* * *

Section 16. It shall be unlawful for any executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit member-

ship to employees other than those in executive, administrative, professional, or supervisory capacities, or which is affiliated with any labor organization which permits membership to employees other than those in an executive, administrative, professional, or supervisory capacity. The provisions of this section shall not be construed so as to interfere with or void any insurance contract now in existence and in force.

• • •

Section 18. *Penalties:* If any labor organization violates any provision of this Act, it shall be penalized civilly in a sum not exceeding one thousand dollars ($1,000.00) for each such violation to be recovered as a penalty in the Circuit Court of the County in which the violation occurred, the action being brought in the name of the State of Alabama by the Circuit Solicitor of the Circuit in which the violation occurred, and it shall be the duty of the Circuit Solicitor of any Circuit in which any such violation occurs to institute and prosecute such action. The doing of any act forbidden or declared unlawful by the provisions of this Act, except where a penalty is specifically provided herein, or the commission of any offense herein declared to be a misdemeanor, shall constitute a misdemeanor, and shall be punishable by a fine not exceeding five hundred ($500.00), or by imprisonment at hard labor for not exceeding twelve months, or both.

STATEMENT OF FACTS

Petitioners, plaintiffs below, are the Congress of Industrial Organizations, the Alabama State Industrial Union Council, the United Steelworkers of America, the International Union of Mine, Mill and Smelter Workers, Textile Workers Union of America, all affiliated with the CIO, Local Unions 1015, 2971, 2382 affiliated with the United Steelworkers of America; all of whom are voluntary unincorporated associations, and Philip Murray, President of the CIO; Carey Haigler, Secretary of the Alabama State Industrial Union Council; David McDonald, Secretary-Treasurer of the United Steelworkers of America; Reid Robinson, President of the Mine, Mill and Smelter Workers; Emil Rieve, President of the Textile Workers; Hoyt Brant, President of Local Union No. 1015; William Nathan, President of Local Union No. 2971, and R. C. Scruggs, President of Local Union No. 2382.

The defendants are Robert E. McAdory, Solicitor of Jefferson County, Alabama, and Holt McDowell, Sheriff of Jefferson County, Alabama.

The action was brought by the plaintiffs below under the Alabama Declaratory Judgment Statute (Title 7, Sections 156-168, Code of 1940) to have declared unconstitutional various sections of the Bradford Act and to restrain the enforcement thereof by the two above-named defendants.

The Bradford Act in substance establishes a Department of Labor, sets up mediation machinery, seeks to license the functioning of labor organizations by requiring them to file various reports and financial statements and the payment of annual fees, regulates the internal affairs and activities of labor organizations, and various aspects of picketing, boycotting and striking. Violations of provisions of the Act result in both civil and criminal penalties *(supra)*.

Two sections of this Act are involved in this petition for certiorari—Section 7 and Section 16. The provisions thereof are set out, *supra, pp.* —.

The facts in the record are substantially undisputed. They show that petitioner associations and their members are engaged in a wide variety of organizing, educational, legislative, collective bargaining, civic and community activities and that these activities necessarily entail the use of methods of communication by word of mouth, press, radio, labor newspapers, as well as other traditional forms of communication (R. 102, 84, 85, 86, 87, 103, 104, 105, 110, 151, 152.)

The record further (R. 143) shows that 18,000 members of the United Steelworkers of America are engaged in work within the State of Alabama upon goods and materials moving in interstate commerce; that 32,000 members of CIO unions affiliated with the petitioners, Alabama State Industrial Union Council, are engaged in Jefferson County, Alabama, in performing work upon goods and materials moving in interstate commerce (R. 142, 143, 144).

The record shows, in addition, that it is the practice and policy of the CIO (R. 123, 124) to admit to membership in its various local unions all employees except those who do not have the right to hire and discharge. The complaint alleges (R. 21, 22, 23) that Sections 7 and 16 are unconstitutional and void because they impose previous general restraints and pro-

hibitions upon the exercise by plaintiffs of their civil rights of free speech, press and assembly; that these sections are discriminatory as to the plaintiffs and violate the equal protection of the laws clause of the Fourteenth Amendment; that they violate Article VI of the United States Constitution.

Petitioners' interest in the proceeding, their standing to raise the constitutional issues, the manner in which labor organizations function and operate, and the manner in which petitioners were aggrieved by reason of the threatened enforcement of the sections of the Act challenged as unconstitutional, are described in the record at R. 84, 85, 86, 87, 102, 103, 104, 105, 110, 151, 152, 158, 160, 176, 183.

The Circuit Court (R. 202) held that the Act as a whole was constitutional and valid; that Sections 12 and 17 were unconstitutional; that so much of Section 13 as prevents a strike except by majority vote was unconstitutional; that so much of the provisions of Section 14 intended to make more effective that part of Section 13 respecting unlawful strikes was unconstitutional. The Supreme Court of the State of Alabama affirmed the determination of the Circuit Court.

Sections 7 and 16 of the Bradford Act are the only sections challenged by petitioners which the Alabama Supreme Court held constitutional, and, as before stated, are the only sections involved in this case.

• • •

ASSIGNMENT OF ERRORS

1. The court below erred in holding that the Act as a whole is constitutional and valid.

2. The court below erred in failing to hold that Sections 7 and 16 constituted an unconstitutional deprivation of the civil rights of petitioners and their members and in denying an injunction against the enforcement of those sections.

3. The court below erred in refusing to hold that Sections 7 and 16 constitute an improper burden on interstate commerce and conflict with the National Labor Relations Act; and in denying an injunction against the enforcement of those sections.

4. The court below erred in refusing to hold that Section 7 denied to the petitioners the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution.

SUMMARY OF ARGUMENT

I

Section 7 of the Alabama statute, which requires labor unions functioning in the State to file their constitutions and by-laws, annual financial reports and other data concerning their internal operations, imposes a restraint and a prohibition upon the exercise of the rights of free speech, press and assembly guaranteed by the Constitution. The every-day functioning of labor unions characteristically involves and embodies an exercise of civil rights. Moreover, because of the situation of the individual worker the functioning of trade unions represents the most important channel through which the rights of such individual worker find expression. The process of assembling, meeting and exchanging views, which is intrinsic to the process of the formation and functioning of any group, dominates the functioning of trade unions. This is true both of local labor organizations which deal with individual employers as well as of national organizations which further pool individual rights and strengthen the effectiveness of their expression. Both national and local organizations engage in a wide variety of educational, political and organizational activities in furtherance of their objectives. These activities not only vitalize petitioner organizations but are essential to the effective functioning of a democratic society. The decisions of this Court clearly support the view that the activities of petitioners are clothed by the First and Fourteenth Amendments with the broadest possible protection. Section 7 of the Alabama statute does not operate merely as a registration provision but exacts a price for the exercise of rights which enjoy constitutional protection. Failure to comply with the statute results in a forfeiture of the wide variety of civil rights which the functioning of a trade union necessarily entails. No contention is made that the nature of trade unions in itself immunizes them from regulation. It is contended, however, that a State may not impose a ban upon the exercise of these rights by labor organizations.

Section 16 of the Alabama statute, prohibiting professional and supervisory employees from joining organizations with their fellow employees, is a denial of the rights of these groups

as well as of their fellow union members and is likewise unconstitutional since it places a ban upon the exercise of the civil rights of the groups excluded as well as of petitioner labor organizations.

II

Sections 7 and 16 improperly burden interstate commerce and conflict with the National Labor Relations Act. Petitioner labor organizations are interstate entities. Their activities, such as collective bargaining, involve the creation of conditions of employment over interstate areas. The effect of the statute is to burden the interstate functioning of petitioner labor organizations as well as to permit the creation of local conditions of employment at variance with and burdening interstate employment patterns which present-day collective bargaining gives rise to. Specifically, Sections 7 and 16 deprive petitioner labor organizations and their members of rights granted under the National Labor Relations Act. Section 7 by demanding a price as a condition of the "functioning" of labor organizations severely limits the right to engage in those organizational activities which are unconditionally granted by Section 7 of the National Labor Relations Act. Section 16 denies named groups of employees the right to unions of their own choosing although they are plainly granted those rights by Sections 2 (3) and 7 of the National Labor Relations Act. There is a direct conflict therefore between both Sections 7 and 16 of the Bradford Act and the National Labor Relations Act.

III

Sections 7 and 16 apply only to certain labor organizations and do not apply at all to associations of employers or other associations. These sections therefore deny petitioner labor organizations equal protection of the law. There is no basis for exempting from the statute railway labor organizations which are no differently situated from petitioner labor organizations. There is nothing in the Railway Labor Act which justifies this difference in treatment and there is no factual difference in the manner in which labor organizations of railway employees function.

IV

The record presents several cases of controversies within the meaning of the Constitution. All necessary elements are present for the Court to determine the constitutionality of the Alabama Act. Respondents are charged with enforcement and present enforcement is threatened. Petitioner labor organizations are faced with the present choice of acquiescing in an unconstitutional law or suffering severe criminal penalties for non-compliance. Even if there is no immediate prosecution under the Act, failure to comply will severely handicap the normal functioning of petitioners. The very existence of the statutory requirement will, unless immediately complied with, encourage employers to refuse to deal with petitioner unions, and their members to abandon their membership. This is true not only of Section 7 but of Section 10 as well. The question of who is supervisory and who is not is so vague that many individuals will refuse to join petitioner labor organizations for fear that they might fall within one of the proscribed classes. If this prohibition is unconstitutional the petitioners are threatened with irremediable injury.

ARGUMENT

POINT I

THE PROVISIONS OF THE STATUTE REQUIRING LABOR UNIONS FUNCTIONING IN THE STATE OF ALABAMA TO FILE THEIR CONSTITUTIONS AND BY-LAWS, ANNUAL FINANCIAL REPORTS AND OTHER DATA CONCERNING THEIR INTERNAL OPERATIONS VIOLATE THE CONSTITUTION OF THE UNITED STATES IN THAT THEY IMPOSE A PREVIOUS GENERAL RESTRAINT UPON AND PROHIBITION ON THE EXERCISE OF THE RIGHTS OF FREE SPEECH, PRESS AND ASSEMBLY GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

The full effect of the statute and its impact upon the constitutional rights of petitioners may be best apprehended from an examination of the fundamental facts concerning the nature and operations of labor organizations, including petitioner organizations.

A. *The Constitutional Rights Involved in the Functioning of Labor Organizations*

Petitioner labor organizations are all unincorporated associations composed of persons in the State of Alabama and other States of the United States who have assembled together for their mutual aid and protection. They exercise the rights of assembly, free speech and free press in the following manner:

1. ***Origins of union organization—nature of union meetings (R. 80, 88-89)***

The trade union movement owes its origin to the need of individual workers to form groups in dealing with their employers. Organizations such as petitioners came into being because of the awareness of the individual worker that his right to bargain, standing alone, is void of content; that the economic power of his employer and combinations of employers required that the worker act jointly with others to make his rights as an individual meaningful. The thousands of employees who are members of the petitioner organizations found that they, and particularly those of them employed by a single employer or in a single trade or industry, have common problems with respect to their relations with the employer and with the general public. They have therefore as individuals assembled for their mutual aid and protection. Specifically they have met and assembled to give to each other information, views and ideas concerning their wages, hours, other conditions of employment and their relations with their employer and the general public.

It seems clear that this process of meeting and exchanging views involves the exercise by individuals of their constitutional rights. It is equally clear that the process of meeting and the interchange of views is an essential part of the "functioning" of labor organizations and as such is, under Section 7 of the Alabama statute, one of the activities burdened with a prior restraint as a precondition to its being carried on.

2. ***National and local organization (R. 80, 81, 84, 85, 103-104, 151-152)***

The process of common assembly and exchange of views gives rise to local organizations which in turn form the basis for broader organizations which rest upon the same process.

In the development of labor organization it has proved to be impossible to form basic units of organization of all the employees within a given occupation or industry throughout the United States. Since the coordination of program and the realization of common objectives requires it, it has been necessary for groups of employees in each of various cities, localities, regions and states to designate representatives for mutual deliberation and assembly with other representatives. The basic groups which assemble together for the purpose of dealing with problems arising out of a particular plant or locality are termed local unions. The broader assembly of representatives of the various local groups are generally designated as national or international unions.

3. Dissemination of union views and information—publications, educational activities, legislative and political activities (R. 84, 86, 88-89, 122-123, 103-104, 151-152, 7, 37)

The functioning and growth of a labor organization is essentially the process of proselytization, of education, of group strengthening. Those already members of a labor organization seek in every manner possible to induce their fellows to join with them. Much of the work of enlarging the group and spreading its message is done by word of mouth through discussions in the shops and locker rooms.

However, in many instances it is impossible for any individual worker to exercise to the fullest extent and effectiveness his constitutional rights since he is limited to his own financial resources. He is financially in no position to print and distribute newspapers or other literature, to secure radio time, to travel throughout an area to gain union members. Accordingly, for the effectuation of their individual rights of free speech and to make possible a broader dissemination of their views and extension of their membership, the persons assembled into the various local and national organizations as described above have mutually agreed upon certain fixed small amounts of money to be contributed by each to make possible the publication of newspapers, pamphlets, leaflets and other documents, the use of other means of publicity and dissemination of views and ideas, and the hiring of other persons to devote their full time and energies to the carrying out of these objectives.

Out of the amounts of money so raised by these periodic contributions (normally referred to as "dues"), a portion is sent by such local group to the national organization to carry out throughout the country the objectives for which the members of the organization are assembled in the organization.

Each national labor organization, including petitioner national unions in the present case, engages in the publication of newspapers and other literature and dispatches individuals to various parts of the country to spread throughout the industry or the occupation the views and ideas of the members of the organizations and to attempt to induce all employees in the industry and the occupation to join with those who are already members of the organization in the furtherance of the objectives of the organization. Thus the United Steelworkers of America maintains a complete educational department. This department designs posters, publishes pamphlets and leaflets for distribution to all members, assists local unions in the establishment and maintenance of their own educational committees, and guides the local committees in the advancement of their educational programs.

One of the major objectives and important activities in which petitioner labor unions engage is the furtherance and opposing of national, State and local legislation. Petitioner labor organizations and their members constantly discuss in their meetings problems arising out of either pending or proposed legislation and the activities of their elected representatives in local, State and national legislative bodies in regard thereto. Petitioner labor unions and their members in their meetings arrange for the preparation and presentation of petitions addressed to their elected representatives in regard to such legislation. Further, these labor unions and their members in their meetings discuss and arrive at decisions in regard to their support or opposition to candidates for public office of local, State or national character.

These activities of the national and international unions are all carried on in furtherance of the objectives for which the members have assembled into their local groups. Financial and other support for activities of the national and international unions in aid to the objectives of these local unions is dependent upon the mutual contributions, obligations and assistance undertaken by each and all of the local unions. The

assistance of the national organization to any one local organization is dependent upon the assistance rendered to the national organization by the remaining organizations. Any interference with or condition placed upon the operation of one local union weakens and interferes with the operation of the national union and therefore all of the other local unions affiliated with it.

4. *State Councils—and the National CIO (R. 80-81, 84, 85, 151-152, 3, 35)*

The members of the various national organizations, as well as the members of the organizations in different industries and occupations within a single city or State have found that they share with each other common problems and have undertaken through designated representatives common discussions and exchange of views on those problems, have also undertaken to make joint contributions to common funds for the purpose of gathering information and for the purpose of disseminating information to their own members, to fellow employees and to the public concerning the views and activities of the members assembled into these labor organizations. These common and joint efforts within a single State have been carried on by representatives of the organizations within the State established under the name, in many instances, of a "State Industrial Union Council", such as petitioner Alabama State Industrial Union Council.

The common national efforts of a number of national organizations have resulted in the establishment of a national representative organization known as the Congress of Industrial Organizations, which is a petitioner herein.

The CIO is the medium whereby the affiliated organizations may exchange and discuss ideas and information relating to their objectives, disseminate to the public facts, information and opinions concerning the CIO and its affiliated organizations, their purposes and objectives.

The CIO promotes educational programs, distributes educational material to its affiliated organizations, maintains national publications and national legislative services by which it keeps its affiliated organizations informed concerning matters of public and national significance.

Interferences with or prohibitions placed upon the activities of the CIO, or the State Industrial Union Councils deprive national and local unions alike of the benefits of the activities of these organizations; impede operations of a local affiliated to a national union; impair the effectiveness of the activities of the CIO and of the Alabama State Industrial Union Council on behalf of all other affiliated local and national unions.

5. *Collective Bargaining (R. 80, 213-218)*

The most important objectives of the exchange of views and the reaching of common determinations on both national and local levels are, of course, those related to wages, hours, and other conditions of employment. The views of one single worker in these matters can make, of course, only slight impression upon an employer employing many thousands of workers. Through the pooling their joint views and economic resources, and through the joint studies and analyses of economic and other factors thus made possible, the workers assembled into labor unions are enabled to arrive at commonly agreed-upon conclusions as to the desirable and economically feasible terms and conditions.

Through their designated representatives the workers assembled into labor organizations are then enabled to present their views to their employers and on the basis of their investigation, analysis and information, to attempt to induce and persuade the employer of the justness and soundness of these views.

Each individual worker could, of course, in the exercise of his right of free speech, attempt to speak to or write to or carry on discussions with his employer concerning these matters. As a matter of practical fact, however, each individual worker is limited by economic and other factors in the full effectuation of his right of free speech by the pressure of his own employment, by his lack of facilities for research and study, or by perhaps his own limitations of expression. By pooling their resources and energies and by selecting, whether for compensation or otherwise, a representative to undertake these functions on their behalf, all of the individual workers, members of a labor organization, are merely undertaking to

carry out in a more effective manner the exercise of their same right of free speech.

Each individual worker who seeks to induce his fellow workers to join with him in a labor organization is also exercising his fundamental right of free speech. This activity is constantly going on in that only through the exercise of this right on the part of all the members of a labor union is the very existence of the labor union assured.

Any precondition or prohibition placed upon this activity is an improper limitation upon the effective exercise of constitutional rights.

6. *Conclusion*

Not as an optional or casual matter but necessary and intrinsic to the functioning of labor organizations is the exercise of the civil rights of freedom of speech, press and assembly. None of the petitioner labor organizations is engaged in any business for profit (R. 83). Like other labor organizations, petitioner labor organizations are groups of individuals gathered and assembled together for the more effective exercise, through joint action, of the constitutional rights to which each individual is entitled and which individuals are likewise constitutionally privileged to exercise jointly. The exercise of civil rights is the heart of the functioning of a labor organization. This has been made clear in a series of decisions of this and other Courts.

B. *Applicable Court Decisions Support Petitioners' Contention That the Functioning of Labor Organizations Embodies the Exercise of Civil Rights*

That the operations of a labor union constitute and embody the exercise of civil rights is not a novel doctrine. Decisions of this Court lend strong support to the contention that workers engaged in their self-organizational activities are engaged in the exercise of the rights of free speech, press and assembly.

In *Hague* v. *Committee for Industrial Organization*, 307 U. S. 307, the CIO and its affiliated unions sought an injunction against, among other things, the application and enforcement of city ordinances which prohibited the distribution of leaflets in connection with their organizing activities and prevented

the holding of meetings in connection with the functioning of labor organizations without first obtaining a license. The Court expressly held that the function of the plaintiff labor unions involved the exercise of the rights of peaceful assembly, free speech and free press, and that the ordinances constituted an abridgment of these rights and were therefore unconstitutional under the Fourteenth Amendment of the United States Constitution. Mr. Justice Stone, in his concurring opinion, stated:

> "Since freedom of speech and freedom of assembly are rights secured to persons by the due process clause, all of the individual respondents are primarily authorized by Section 1 of the Civil Rights Act of 1871 to maintain the present suit in equity to restrain infringement of their rights."

In *Thornhill* v. *Alabama*, 310 U. S. 88, the Court discussed the nature of the rights exercised by labor unions and their members:

> "In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. *Hague* v. *CIO*, 307, U. S. 496, 59 S. Ct. 954, 83, L. Ed. 1423; *Schneider* v. *State*, 308 U. S. 147, 155, 162, 163, 60 S. Ct. 146, 151, 84 L. Ed. 155: See *Senn* v. *Tile Layers Union*, 301 U. S. 468, 478, 57 S. Ct. 857, 862, 81 L. Ed. 1229. It is recognized now that satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an importance which is not less than the interests of those in the business or industry directly concerned. The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing. The merest glance at State and Federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern. Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society. The issues raised by regulations, such as are challenged here, infringing upon the right of employees effectively to inform the public of the facts of a labor dispute are part of this larger

problem. We concur in the observation of Mr. Justice Brandeis, speaking for the Court in *Senn's* case (301) U. S. at page 478, 57 S. Ct. at page 862, 81 L. Ed. 1229): 'Members of a union might, without special statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution'."

Again, in *N.L.R.B.* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33, the Court emphasized the significance of union organization as a means of securing real effectuation for the individual worker of his right to contract freely. The Court there said:

> "Thus, in its present application, the statute goes no further than to safeguard the right of employees to self organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer.
>
> "That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent who has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209, 42 S. Ct. 72, 78, 66 L. Ed. 189, 27 A.L.R. 360."

Indeed, the basic constitutional right to join with others for a common objective has been recognized not merely in the case of a labor organization. The Court has specifically held that association for lawful purposes, economic, political, religious, or social, is an exercise of those liberties of speech, press and assembly guaranteed against State interference by the due process clause of the Fourteenth Amendment.

In *De Jonge* v. *Oregon*, 299 U. S. 353, the Court stated that:

> "The right of peaceful assembly is a right cognate to the right of free speech and free press and is equally fundamental . . .
>
> "The First Amendment of the Federal Constitution expressly guarantees that right against abridgment by Congress. By explicit mention there does not argue exclusion elsewhere. For the right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of civil and political institutions—principles which the Fourteenth Amendment imposes in the general terms of its due process clause." (At page 364)

In *United States* v. *Cruikshank*, 92 U. S. 542, the Court said:

> "The very idea of the government, republican in form, implies the right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for redress of grievances." (At page 552)

See also *Herndon* v. *Lowry*, 301 U. S. 242.

More recently, the Court in *Thomas* v. *Collins*, No. 14, this Term, held:

> "The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and free press are not confined to any field of human interest.
>
> "The idea is not sound therefore that the First Amendment's safeguards are wholly inapplicable to business or economic activity. And it does not resolve where the line shall be drawn in a particular case merely to urge, as Texas does, that an organization for which the rights of free speech and free assembly are claimed is one 'engaged in business activities' or that the individual who leads it in exercising these rights receives compensation for doing so."
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> • • • • • • • •
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> ". . . Necessarily correlative was the right of the union, its members and officials, whether residents or nonresidents of Texas and, if the latter, whether there for a single occasion or sojourning longer, to discuss with and inform the employees concerning matters involved in their choice. These rights of assembly and discussion are protected by the First Amendment."
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> • • • • • • •

"Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers. *And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others.*" (Emphasis supplied.)

The position contended for here has received further support from a decision of the Supreme Court of the State of Colorado. In holding unconstitutional a portion of a Colorado statute requiring incorporation of labor organizations the court stated (*American Federation of Labor* v. *Reilly*, decided December 21, 1944, 15 Labor Rel. Reporter, 556, 554):

"The courts of the United States for many years, and generally without regard to statute, have recognized the right of workmen to organize in labor or trade unions for the purpose of promoting their common welfare by lawful means. See *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 42 S. Ct. 72, 66 L. Ed. 189, 27 A.L.R. 360. This right has been declared to be a 'fundamental' one (*National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893, 108 A.L.R. 1352; *Texas & N. O. R. R. Co.* v. *Brotherhood*, 281 U. S. 548, 50 S. Ct. 427, 74 L. Ed. 1034), existing independently, and prior to the authorization for formation of the National Labor Relations Board. (*Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 60 S. Ct. 561, 84 L. Ed. 738). See also, 31 *Am. Jur.*, p. 851, Sec. 32; *National Labor Relations Board* v. *Jones, supra; Iron Molders' Union* v. *Allis-Chalmers Co.* (CCA 7th), 166 F. 45, 20 L.R.A. (N.S.) 315. See, also, *Pickett* v. *Walsh*, 192 Mass. 572, 78 N.E. 753, 6 L.R.A. (N.S.) 1067, 116 A. St. Rep. 272, 7 Ann. Cas. 638, Mr. Justice Stone (now, Chief Justice), in his opinion in *Hague* v. *C. I. O.*, 307 U. S. 496, 59 S. Ct. 954, 83 L. Ed. 1423, expressed that the guarantees of free speech and assembly under the First Amendment extended protection against attempts of the authorities under a Jersey City ordinance to prevent the labor organizations involved 'from holding meetings and disseminating information whether for the organization of labor unions or for any other lawful purpose.' The specific purposes of such meetings, according to the opinion of Justice Stone, were 'to organize labor unions in

various industries in order to secure to workers the benefits of collective bargaining with respect to betterment of wages, hours of work and other terms and conditions of employment.' An injunction against the city officials was sustained under the First Amendment, and the rights of the unions were protected against infringement by the state under the Fourteenth Amendment.

"Notwithstanding the contrary contentions of counsel for defendants, we think the decisions indicate that the constitutional guarantee of assembly to the people is not restricted to the literal right of meeting together 'to petition the government for a redress of grievances.' See *Hague* v. *C. I. O., supra; DeJonge* v. *Oregon*, 299 U. S. 353, 57 S. Ct. 255, 81 L. Ed., 278; *Herndon* v. *Lowry*, 301 U. S. 242, 57 S. Ct. 732, 81 L. Ed. 1068; *Murdock* v. *Pennsylvania*, 319 U. S. 105, 63 S. Ct. 870, 87 L. Ed. 1292, and *State* v. *Butterworth*, 104 N.J.L. 579, 142 A. 57.

"While these decisions may not as unequivocally place the right of workmen to organize and operate as a voluntary labor association within the area of the guarantees of assembly and free speech as the Thornhill case locates peaceful picketing within the perimeter of the latter, their purport seems to us to support the conclusion of the trial court that sections 20 and 21 transgressed constitutionality by denying to unincorporated labor unions, and their individual members any right to assemble and function as such in the promotion of their common welfare by lawful means. The recognition of the constitutional right to so do, of course, in no way precludes a state within the limits of its inherent police power, from regulating the activities and conduct of labor unions, incorporated or unincorporated, in the interest of public welfare. The portions of the Colorado Act now in consideration patently reach beyond the limits of such permissible regulation."

C. *Sections 7 and 18 Constitute Infringements Upon the Constitutional Rights Embodied in the Operations of Labor Organizations*

Unlike the *Thomas* case which involved a registration provision, this statute involves a broader restraint.

Sections 7 and 18 of the statute require all labor organizations (including those in existence and those which may be organized hereafter) which desire to operate within the State of Alabama, as a precondition to their functioning to comply with the requirements imposed by Section 7. Any labor union which operates in a normal way without first complying with

these requirements is subjected by Section 18 to civil and criminal penalties.

The foregoing provisions of the statute in effect impose a license not merely on one or another activity of labor unions but on the entire "functioning" of such organizations. There can be no dispute that the filing requirement is substantially the equivalent of a licensing requirement. The organization and its members are compelled to comply with certain formal requirements. If they do not they are not at liberty to carry on the forbidden activities. The Court has held that a requirement to file certain documents is equivalent to a licensing requirement. In *International Textbook Company* v. *Pigg*, 217 U. S. 91, the Court was faced with a requirement imposed by the State of Kansas on certain types of corporations as a prerequisite to doing business in the State. The Court thus described the nature of the requirement:

> "In the first place, it is made a condition precedent to the authority of a corporation of another State, except banking, insurance, and railroad associations, to do business in Kansas that it shall prepare, deliver and file with the Secretary of State a detailed statement, showing the amount of the authorized, paid-up par and market value of its capital stock, its assets and liabilities, a list of its stockholders, with their respective postoffice addresses and the shares held and paid for by each, and the names and postoffice addresses of the officers, trustees, or directors and managers." (page 108)

Analyzing this requirement, the Court concluded that it was in effect a licensing requirement:

> "It is true that the statute does not, in terms, require the corporation of another State engaged in interstate commerce to take out what is technically a 'license' to transact its business in Kansas. But it denies all authority to do business in Kansas unless the corporation makes, delivers and files a 'statement' of the kind mentioned in Section 1283. The effect of such requirement is practically the same as if a formal license was required as a condition precedent to the right to do such business. In either case it imposes a condition upon a corporation of another State seeking to do business in Kansas, which, in the case of interstate business, is a regulation of interstate commerce and directly burdens such commerce."

See also *Crutch* v. *Kentucky*, 141 U. S. 47.

The provisions of the Alabama statute above cited are even more vulnerable to constitutional attack than the requirement in the *International Textbook Company* case for the reason that the Alabama statute is even far more sweeping in its prohibition. The Alabama statute imposes its requirements upon *every* labor organization desiring to operate in the State, and compels filing before any such labor organization can operate. The conduct which is made unlawful, except in compliance with the filing requirement, is not merely one or two or several defined activities in connection with the operation of a labor organization. The conduct which is rendered unlawful except after compliance through filing is the entire "functioning" of the labor organization. This would include the holding of meetings, the solicitation of members, the attempt to present requests and views and thoughts to employers and otherwise engage in collective bargaining, the dissemination of pamphlets, handbills, newspapers to members, the carrying on of educational activity, striking, picketing, or boycotting, in connection with labor disputes. The inclusive scope of the activities subjected to restraint is made clear by the decision of the Alabama Supreme Court in No. 588, holding that the statutory prohibition extends to all activity by a labor organization "for the promotion of the interests of its members." Moreover the criminal penalties may not be viewed as restraint consistent with continued functioning. The law of Alabama is clear that the failure to comply with a statute imposing such penalties will furnish the basis for an injunction. *State* v. *Bynum*, 243 Ala. 138, 9 So. (2d) 134; *Try-Me Bottling Co.* v. *State*, 235 Ala. 207, 178 So. 231; *State* v. *Ellis*, 201 Ala. 295, 78 So. 71. See also, *United States* v. *American Bond & Mortgage Co.*, 31 Fed. 448 (N.D. Ill.), aff'd, 52 F. (2d) 318 (C.C.A. 7).*

The attitude of this Court with respect to state attempts to impose pre-conditions to the exercise of basic constitutional rights is expressed in *Lovell* v. *City of Griffin*, 303 U. S. 444,

* The Florida statute now before the Court in No. 811 similarly prohibits labor organizations from "operating" and "functioning" in the state unless they have complied with the requirements of Section 6 of that statute. And the Supreme Court of Florida upheld an injunction which prohibited a labor organization "from functioning and operating as a labor organization" until it complied with the statutory requirements.

where the Court passed upon a city ordinance which prohibited distribution of leaflets and other literature except after securing the written permission of the city authorities. The Court there concluded:

> "We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. The struggle for the freedom of the press was primarily directed against the power of the licensor. It was against that power that John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing'. And the liberty of the press became initially a right to publish '*without* a license what formerly could be published only *with* one'. While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision. See *Patterson* v. *Colorado*, 205 U. S. 454, 462, 27 S. Ct. 556, 51 L. Ed. 879, 10 Ann. Cas. 689; *Near* v. *Minnesota*, 283 U. S. 697, 713-716, 51 S. Ct. 625, 630, 75 L. Ed. 1357; *Grosjean* v. *American Press Company*, 297 U. S. 233, 245, 246, 56 S. Ct. 444, 447, 80 L. Ed. 660."

The Court indeed has regularly frowned on any efforts to impose burdens of this type, however nominal in appearance, upon the exercise of the basic rights guaranteed in the Bill of Rights. As Mr. Justice Roberts has pointed out, writing for the Court in *Schneider* v. *New Jersey*, 308 U. S. 147:

> "This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government of free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.
>
> "In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise,

> the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

See also *Murdock* v. *Pennsylvania*, 319 U. S. 105.

The assertion of the power to grant a license implies the assertion of the power to withhold it. If the State may insist that the rights of free speech, press and assembly may be exercised only on terms dictated by the State, it may insist on prohibiting the enjoyment of those rights altogether. The degree of burden is not the determining factor; it is the power which is asserted that is non-existent. *Grosjean* v. *American Press Company*, 297 U. S. 233, at 250.

In evaluating the limits of permissible State action with respect to the guarantees of the Bill of Rights, it is important to note the very significant distinction which the Court has made clear in a recent decision. This is the distinction between legislation which infringes upon the important freedoms of speech, press, assembly and worship as distinguished from legislation which infringes upon rights of a nature less basic to our democratic structure. In *West Virginia* v. *Barnette*, 319 U. S. 624, the Court stated:

> "In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a state to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect."

In this light, the Alabama statute requiring labor unions to file their constitutions and by-laws before they may func-

tion in the state is fatally in conflict with the constitutional guarantees of freedom of speech, press and assembly. This conclusion is inescapable once it is recognized that these rights are and remain basic constitutional rights whether exercised by and through labor organizations or otherwise. Indeed, it is through labor organizations that American working men and women practice the democracy and exercise the rights protected by the Bill of Rights.

This is not intended to suggest that labor unions are above or beyond the law. Members of labor organizations as well as the organizations themselves are subject to all of the police powers of the state. But a state may not take the view that organization into labor unions is a privilege which the state may grant or withhold or condition in any manner that it pleases. It may not place a ban upon the exercise of freedom of speech, press and assembly through labor organizations by forbidding such labor organizations to function until they have complied with the statutory filing requirements except where such ban is essential "to prevent grave and immediate danger to interests which the state may lawfully protect." *West Virginia* v. *Barnette, supra.* In contrast to the sweeping sanctions which the statute visits upon labor organizations are those adopted by the Federal Government with respect to the filing of financial reports pursuant to the provisions of the Revenue Act of 1943, Title I, Sec. 117a, 58 Stat. 36, 26 U. S. C., sec. 54(f). Unlike the Alabama statute, the Federal Act leaves organizations which fail to file the required returns free to function. It simply imposes a penalty upon those individuals responsible for failing to file a return. Internal Revenue Code, 53 Stat. 28, 26 U. S. C., Sec. 54(a), (b), (d) and 53 Stat. 62, 26 U. S. C., Sec. 145

POINT II

SECTION 16 PROHIBITING ADMINISTRATIVE, PROFESSIONAL AND SUPERVISORY EMPLOYEES FROM JOINING ORGANIZATIONS WITH THEIR FELLOW EMPLOYEES IS A DENIAL OF THE CONSTITUTIONAL RIGHTS OF THESE GROUPS AS WELL AS OF THEIR FELLOW UNION MEMBERS.

Section 16 reads in part as follows:

"It shall be unlawful for any executive, administrative, professional or supervisory employee to be a member in,

or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit membership to employees other than those in executive, administrative, professional or supervisory capacities; or which is affiliated with any labor organization which permits memberships to employees other than those in an administrative, professional, or supervisory capacity."

Under the terms of this section it is thus made criminal, for example, for an engineer or a chemist employed in an industrial concern to join a labor organization together with the other production employees. It is thus made a crime for him to undertake to advance his own welfare and viewpoint by utilizing a large and strong organization of his fellow employees as a means of expressing and protecting himself. By virtue of the same criminal prohibition his fellow employees are denied the opportunity to join the engineer or the chemist in pooling their economic resources, in utilizing their common views and abilities for the formulation and dissemination of their ideas and for their mutual protection.

What has already been said with respect to the constitutionally protected aspects of the functioning of labor organizations applies fully to the prohibition here under consideration. By removing from the area of possible choice by executive, administrative, professional or supervisory employees of petitioner labor organizations the state has improperly denied petitioner labor organizations the right to engage with others in constitutionally protected activities.

It is patent that, without any warrant in the facts, the State of Alabama has unconstitutionally chosen to place an absolute prohibition on the right of both groups to enjoy together and separately the rights of free speech, press and assembly. There is nothing in the record which shows that a clear and present danger has existed in the past or may arise in the future from the joint assemblage of administrative, executive and supervisory employees with other workers.

The effect and the purpose of this section is apparent. It is to weaken the bargaining power of a union by limiting the scope of its membership. In doing so it prevents the exchange of opinion through the medium of the exercise of the rights of free speech, press and assembly by and between the two groups. *Thomas* v. *Collins*, No. 14, this Term.

POINT III

SECTIONS 7 AND 16 IMPROPERLY BURDEN INTERSTATE COMMERCE AND CONFLICT WITH THE NATIONAL LABOR RELATIONS ACT AND ARE THEREFORE INVALID BECAUSE THEY VIOLATE ARTICLE VI OF THE UNITED STATES CONSTITUTION.

A. *Sections 7 and 16 Burden Interstate Commerce*

Section 7 of the Bradford Act conditions the functioning of labor organizations upon a licensing requirement, but petitioner labor organizations are interstate entities and indeed must operate on an interstate basis to perform their functions effectively (R. 76, 77, 78, 80). Because of the interstate spread of modern industry and the scope of modern employer associations, union organization is characteristically and necessarily an interstate matter. There is and must be a constant interchange of information and advice between local unions and their internationals. Not only is policy formed on a national level but actual bargaining has a national rather than a local theatre (R. 76, 78, 80, 82, 84, 87-88, 109, 111, 115-116, 117, 143, 144, 144-145, 172-173, 215). The need to survive under modern industrial conditions has forced labor organizations to function on a national basis. The relationship between the national organization and the local unit is maintained through the use of extensive communications and the creation of intermediate bodies to translate policy. To the extent that Section 7 licenses the local functioning of petitioners, it improperly burdens interstate commerce and is plainly condemned by *International Textbook Co.* v. *Pigg*, 217 U. S. 106.

Moreover, under the conditions created by modern industry collective bargaining is not a matter admitting of diversity of treatment according to the special requirements of local conditions. Cf. *Thornhill* v. *Alabama*, 310 U. S. 88. Petitioners' members manufacture and process goods which have an interstate market and petitioners' collective dealings are with employers who are engaged in interstate commerce (R.

82, 82-83, 115-116, 143, 146-147, 191, 215, 9-10, 39, 40). Section 16 of the Bradford Act, which denies administrative, executive, professional and supervisory employees representation through unions of production workers would destroy bargaining patterns which are national in scope. The stability which uniformity in bargaining terms necessarily produces would be threatened, and the interstate activities not only of unions but of the employers with whom they bargain would be subject to disruption, if local regulations of the type here involved were permitted to stand. The record shows (R. 77, 79, 82, 83, 87, 9-10, 39-40) that petitioner labor organizations in their bargaining relationships lay down terms and conditions of employment for broad interstate areas. But contracts which such bargaining produces would be denied local effect in those circumstances in which petitioners or their members failed to comply with Sections 7 and 16.

This balkanization of the bargaining process would seem to be condemned by the commerce clause. Congress has expressly stated in the National Labor Relations Act that the promotion of collective bargaining and of self-organization is a federal concern. This Court, in *N.L.R.B.* v. *Hearst Publications*, 322 U. S. 111, 123, has stated with respect to that Act:

> "Both the terms and the purposes of the statute, as well as the legislative history, show that Congress had in mind no such patch-work plan for securing freedom of employees' organizations and of collective bargaining. The Wagner Act is federal legislation, administered by a national agency, intended to solve a national problem on a national scale." Cf., e.g., Sen. Rept. No. 573, 74th Cong., 1st Sess., pp. 2-4.

See also, *Federal Trade Commission* v. *Bunte Bros.*, 312 U. S. 349.

B. *Sections 7 and 16 May Not Coexist With the National Labor Relations Act*

In the National Labor Relations Act the federal government has declared a public policy and program with respect to labor relations for the purpose, as expressly stated in the statute itself, of preventing obstructions to interstate com-

merce. The Act therefore sets up a uniform foundation and structure upon which collective bargaining institutions and practices throughout the nation may be erected.

Section 7 of the Bradford Act, on the other hand, undertakes to impose in the State of Alabama restrictions and conditions which will have not merely the effect of creating interstate differences in a field of action in which the federal government has sought uniformity, but actually of preventing the effectuation of the federal statute in the State of Alabama.

The National Labor Relations Act states a basic right of employees:

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activity, for the purpose of collective bargaining or other mutual aid or protection." (Section 7, National Labor Relations Act)

Even more significantly Section 9 of the National Labor Relations Act establishes a procedure whereby official certification is issued by the United States Government indicating the representative which employees in a unit have designated to represent them. Thereafter, by virtue of Section 8(5), the employer has a statutory obligation to negotiate with that representative. In short, the policy and program of the National Labor Relations Act is the promotion of collective bargaining relationships so that by mutual discussions employers and the representatives of their employees may reach common agreement.

Section 7, however, declares that despite any federal policy and despite the federal statute a labor organization, even though the duly designated representative of the employees, may not operate in that capacity except on compliance with certain preconditions. In effect the state statute purports to permit the operation of the federal statute only on terms dictated by the state. Such an attempt is clearly invalid. It is invalid on two separate grounds: (1) even if there were no conflict between the statutes there is an attempt by the state to enter a sphere in which Congress has tak action and preempted the field as a field in which federal policy should be

operative, and (2) whether or not Congress has preempted the field certainly the state may not take action in this field in a manner inconsistent with and obstructive of the federal statute.

The constitutionality of the Federal Act is no longer open to challenge. It is a valid exercise of Congressional power over interstate commerce. *N. L. R. B.* v. *Jones and Laughlin Steel Corporation, supra.* It is established that the exercise of the federal power to protect interstate commerce in a specific way over a subject requiring national protection excludes any state action whether it be conflict or complementary. An explicit declaration of exclusive authority is not necessary. *Gilvory* v. *Cuyahoga Valley Railway Company*, 292 U. S. 57. In the case of the National Labor Relations Act, Congress specifically gave exclusive jurisdiction to its agency, the National Labor Relations Board. Section 10(a) of the National Labor Relations Act reads as follows:

> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise."

In many decisions, Congressional protection of interstate commerce has resulted in the suspension of State legislation governing the same subject.

In *Erie Railroad Company* v. *People of the State of New York*, 233 U. S. 671, an action was brought for a penalty for alleged violations of a State law regulating employees' hours of labor. The defendant's answer alleged that it was engaged in interstate commerce and that the Federal Hours of Service Act applied and was exclusive, and that therefore the State Act was unconstitutional. The defendant was convicted. On appeal the Court held that Congress had preempted the field of hours of service of employees of railroads engaged in interstate commerce and reversed the decision of the State Court. The Court stated, in its decision:

> "Indeed, when Congress acts in such a way as to manifest its power to exercise its constitutional authority, the regulating power of the State ceases to exist." (p. 681)

In *Napier* v. *Atlantic Coast Line Railroad Company*, 272 U. S. 605, an appeal was taken from a judgment enjoining the operation of a statute requiring automatic doors for locomotive fire boxes. The railroad contended that the Federal Boiler Inspection Act and Safety Appliances Act occupied the field of regulation of railroad equipment used in interstate commerce, so far as to preclude State legislation on that subject. The Court held the State law unconstitutional because federal legislation governed the same subject. The Court held that the fact that the Interstate Commerce Commission had not seen fit, in exercising its authority, to impose the same kind of regulations had no bearing on the conclusion that the Federal Acts had fully occupied the field, thus precluding States legislation. The Court, through Mr. Justice Brandeis, said:

> "The Federal and the State statutes are directed to the same subject—the equipment of locomotives. They operate on the same object. It is suggested that the power delegated to the Commission has been exerted only in respect to minor changes or additions but this, if true, is not of legal significance. It is also urged that, even if the Commission has power to prescribe an automatic firebox door and a cab curtain, it has not done so; and that it has made no other requirement inconsistent with the State legislation. This also, if true, is without legal significance. The fact that the Commission has not seen fit to exercise its authority to the fullest extent conferred, has no bearing upon the construction of the Act delegating the power. We hold that State legislation is precluded, because the Boiler Act as we construe it, was intended to occupy the field. The broad scope of the authority conferred upon the Commission leads to that conclusion. Because the standard set by the Commission must prevail, requirements by the States are precluded, however commendable or however different their purpose. . . . If the protection now offered by the Commission rules is deemed inadequate, application for relief must be made to it. The Commission's power is ample." (p. 612)

See also to the same effect, *Northern Pacific Railroad Company* v. *State of Washington*, 212 U. S. 370; *Southern Railway Company* v. *Reid*, 222 U. S. 424; *Pennsylvania Railroad Company* v. *Public Service Commission*, 250 U. S. 566; *Charleston and Western Carolina Railway Company* v. *Varnville Furniture Company*, 237 U. S. 597; *Minnesota Rate Case*, 230 U. S.

352; and the *Second Employers' Liability* cases, 223 U. S. 1.

In fact the Court has spoken specifically with respect to the operation of the National Labor Relations Act.

In *Consolidated Edison Company* v. *N. L. R. B.*, 305 U. S. 197, this Court, while holding that the validity of a New York State Act was not before it, stated:

> "In seeking to avoid a clash with Federal authorities, the State Act is made applicable 'to the employees of any employer who consents to and agrees with the employer that such employees are subject to and protected by provisions of the National Labor Relations Act or the Federal Railway Act'. It is manifest that the enactment of this State law could not over-ride the constitutional authority of the Federal Government, the State could not add to or detract from that authority." (p. 223)

Particularly in the field of collective bargaining and labor relations insofar as interstate commerce is concerned is the necessity for uniform federal legislation apparent. Compare *Hines* v. *Davidowitz*, 312 U. S. 52.

The National Labor Relations Act is only a part of a whole legislative program that includes as well such safeguards of collective bargaining as the Norris-LaGuardia Anti-Injunction Act, the Wages and Hours Law, and the Walsh-Healey Act. See *Apex Hosiery Company* v. *Leader*, 310 U. S. 469. If states are permitted to set up preconditions to the enjoyment of the rights intended to be conferred by the National Labor Relations Act, uniform administration and control of labor relations affecting interstate commerce will soon become a fiction.

It is by no means urged here that a state may in no event legislate with respect to employment relations where employees are employed in intra-state commerce. It is recognized, of course, that the state is fully empowered to legislate to protect peace, morals, health, good will, and general welfare, objectives embraced within the police powers of the state. What is denied here is the power of a state to establish a previous general restraint upon the rights of employees to enjoy the rights conferred by the National Labor Relations Act where the restraint, as here, is not imposed as a legitimate exercise of the state's police powers. The State of Alabama is fully empowered to punish by proper civil or criminal meas-

ures breaches of peace, disorder or acts of force or violence. It can send strikers to jail for disorderly conduct, unlawful assembly or riot, but it may not establish preconditions to the exercise of the rights of workers to collective bargaining conferred by the Federal Government where such preconditions are neither connected with nor related to the attainment of proper objectives of police power. In two instances, the Court has upheld orders of a state board affecting employees engaged in interstate commerce where the orders were issued under an act (The Wisconsin Peace Act) the scope of which was not limited to intra-state commerce. *Hotel and Restaurant Employes et al.* v. *Wisconsin Employment Relations Board, et al.*, 315 U. S. 437; *Allen-Bradley, Local Union No. 1111, et al.* v. *Wisconsin Employment Relations Board, et al.*, 315 U. S. 740. But in both of these cases, the Court confined its approval to an administrative order prohibiting violence in connection with picketing. Thus, in a subsequent case, *Carpenters and Joiners Union et al.* v. *Ritter's Cafe*, 315 U. S. 722, Mr. Justice Reed referred to the *Hotel and Restaurant Employees* case and said:

> "In the latter case [the *Hotel and Restaurant* case], the order approved forbids only violence and 'permits peaceful picketing'."

In the *Allen-Bradley* case, *supra*, after the Court upheld the order of the state board which forbade violence, the Court said:

> "If the order of the State Board affected the status of the employees or if it caused a forfeiture of collective bargaining rights, a distinctly different question would arise."

As we have previously pointed out, the failure of a union to meet the filing requirements of Section 7, would, if the Alabama statute is given effect, work a forfeiture of collective bargaining rights.

In fact, the Alabama law if given effect conflicts sharply with almost every other aspect of the National Labor Relations Act. The national Act defines certain unfair labor practices (Section 8) such as interference with the right of employees to join labor organizations of their own choosing, domination or interference with the administration of a labor organization,

discriminatory discharge or other discrimination on the basis of union membership. An employer may specifically be expected to assert that insofar as a union is barred from operating in the State of Alabama by virtue of the failure to comply with the conditions that the State has placed on the union's operation, he is freed from the restrictions of the national Act with respect to the rights of members of those organizations. The result would be in these aspects of the national Act as well as in the collective bargaining aspect discussed earlier that the state statute would be utilized or would operate to defeat the policy and rights provided in the federal Act.

The state has no power to interfere with the intention of Congress in this way. Apparently, recognizing this limitation upon the state's powers, the Alabama legislature expressly excluded from the necessity to comply with the filing requirement "any labor organization or labor union the members of which are subject to the Act of Congress known as the Railway Labor Act." It is submitted that the failure of the Alabama legislature to extend that exclusion to all labor organizations whose members come within the jurisdiction of the National Labor Relations Act constitutes a fatal defect since, for the reasons set forth above, the filing requirement conflicts with the National Labor Relations Act and thus renders Section 7 of the Alabama statute unconstitutional under Article VI of the Constitution of the United States.

The provisions of Section 16 of the Alabama Act are likewise inconsistent with the National Labor Relations Act. The very heart of the National Labor Relations Act is the proclaimed right of employees "to self-organization, to form, join or assist labor organizations" (Section 7). The Federal Act reflects on its face an intention to spread the scope of the enjoyment of the right as broadly as possible for "employee" is defined to include "any employee." Section 2(3) of the National Labor Relations Act; *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111: It is clear that the occupational groups singled out by Section 16 and quarantined by that section are composed of "employees" within the meaning of the National Labor Relations Act. See, for example, *National Labor Relations Board* v. *Skinner and Kennedy Stationery Company*, 113 F. (2d) 667, 670-671 (C.C.A. 8). The National Labor Relations Board has created a wealth

of administrative experience in connection with the problems of these groups of employees and has effectively adjusted their bargaining rights into the bargaining structure of production and maintenance employees in determining units appropriate for collective bargaining under Section 9 of the National Labor Relations Act. At one stroke the Alabama statute undoes that administrative development in the State of Alabama and creates an exemption to the National Labor Relations Act. But Congress has not been willing so to amend the Act. Congressman Smith of Virginia on February 25, 1943, introduced a bill to amend the National Labor Relations Act by excluding from a definition of employee in Section 2(3) of the Act "any individual engaged in a bona fide executive, administrative, professional or supervisory capacity." H.R. 196, 78th Cong., 1st Sess. The bill was referred to the Committee on Labor, 89 Cong. Rec. 1353, and was never reported to the House.

A recent work, McIver, Wagner and McGirr, *Technologists Stake in the Wagner Act* (1944) aptly characterizes the effect of Section 16. In discussing this section the authors state (at page 29):

> "Alabama in 1943, disregarding the scope of the National Labor Relations Act, especially as regards its complete coverage of cases 'affecting commerce', and also the Board's wide and final discretion in determining appropriate units, which includes the right to define 'professional workers' and its right to certify representatives, passed a law which includes this significant provision [quoting Section 16].
> "This procedure amount[illegible] a 'nullification' of a Federal statute—an issue which [illegible] closed back in the days of John C. Calhoun. It attempts to amend the Wagner Act for the State of Alabama excluding from the jurisdiction of the National Labor Relations Board workers most clearly brought within its scope of authority by the Act."

It is anticipated that the State may contend that as to supervisory employees the statute coincides with the policy of the National Labor Relations Board enunciated in *Matter of Maryland Drydock Company*, 49 N.L.R.B. 733. Even if this claim were valid it would not save the statute for "coincidence is as effective as opposition, and a state law is not to be declared a help because it attempts to go further than Congress has seen

fit to go." *Charleston & Western Ry Co.* v. *Varnville Co.*, 237 U. S. 597, 604.

Moreover this claim is entirely baseless. The National Labor Relations Board recognizes that employees are entitled to the benefits of the Act and the *Maryland Drydock* case itself contains a recognition that supervisors in certain trades are free to form bargaining units. Similarly, the Board recognizes that all supervisors are entitled to protection against discriminatory discharge. *Matter of Soss Manufacturing Co.*, 56 N.L.R.B. 348. Finally, it is apparent not only from the face of the *Maryland Drydock* decision but from more recent hearings of the Board in connection with the bargaining rights of supervisors that the existing Board doctrine with respect to those bargaining rights is tentative. The Board recognizes the fact that with the maturity of bargaining relations in American industry supervisors will be assimilated into the bargaining process. The Alabama statute freezes a temporary expedient into a permanent mold and improperly prevents the application of developing administrative doctrine to supervisory employees in Alabama.

CONCLUSION

Under the conditions of present-day industry labor relations have become a federal subject matter, national in scope. In matters such as these "in which the Nation as a whole is interested . . . there are weighty reasons why the controlling law should be uniform and not changed in every state line." *New York Central RR Co.* v. *Winfield*, 244 U. S. 147, 148-149; *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 123, 125. Congress has recognized that this is a national problem, "national in scope" (the *Hearst* case, 322 U. S. at 123, 125) and has vested "exclusive" jurisdiction over this problem in a federal agency. Section 10(a) of the Act. The "intrusion of another authority" (*Cloverleaf Butter Company* v. *Patterson*, 315 U. S. 148, 169) neutralizes and defeats the intention of Congress to provide an exclusive forum in this field. Whatever may be the scope of the state's powers we do not think that a state may properly limit the extent or the effectiveness of the rights expressly granted by Congress as the State of Alabama has done in the Bradford Act.

POINT IV

SECTION 7 DENIES TO PETITIONERS THE EQUAL PROTECTION OF LAW GUARANTEED BY SECTION 1 OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The filing requirements of the Alabama statute discriminate unfairly against some labor organizations and constitute class legislation obnoxious to the constitutional guarantee of equal protection of the law contained in Section 1 of the Fourteenth Amendment of the Constitution of the United States.

In the first place, as has been noted above, not all labor organizations are required to comply with this requirement. Excluded from the operation of the statute by definition are labor organizations, the members of which are subject to the Railway Labor Act (Section 2a, Alabama statute). It is well established that a statute may not discriminate for or against persons or groups of persons similarly situated unless a reasonable basis exists for the distinction in treatment. It is not enough that there be some difference between the persons or groups, the difference must justify the distinction in treatment under the statute.

With respect to the filing requirements, it is submitted that no difference exists which justifies the exclusion of unions whose members are subject to the Railway Labor Act while requiring unions having members employed by employers subject to the National Labor Relations Act to comply. Neither the Railway Labor Act nor the National Labor Relations Act relates in any way or in any respect to the internal organization of labor organizations as manifested by their constitutions and by-laws. Both Acts protect the right of employees to bargain collectively through representatives of their own choosing; both Acts condemn any interference with the rights of employees to bargain collectively and take such concerted action as they deem necessary to protect their bargaining rights or other mutual interests. The Railway Labor Act goes farther than the National Labor Relations Act in that it provides mediation and arbitration of disputes. With this exception, however, the Acts have the same general purpose, as is evidenced by the fact that Congress excluded from the opera-

tions of the National Labor Relations Act employers governed by the Railway Labor Act (Section 2, Subdivision 2, National Labor Relations Act). The distinction, therefore, made by the Alabama statute between labor organizations which come under the jurisdiction of the Railway Labor Act and those whose members come within the jurisdiction of the National Labor Relations Act is arbitrary and capricious, and no justification for the distinction can be found in any of the differences which exist between the two federal Acts.

Further, and equally objectionable, is the distinction made by the Alabama statute between labor organizations, which are required to file their constitutions and by-laws, and employers associations which are not. It is well known that employers' associations are playing a role of ever-increasing importance in industrial labor relations. Indeed, in conditions of modern industry, employees who seek to organize and to bargain with their employer find more often than not that they are confronted and have to deal with the combined power of all employers engaged in the same and related industries organized in an employers' association. It is certain that employers' associations are today no less involved in labor industrial relations on the employer's side than labor organizations are involved on the side of employees. To require labor organizations to comply with the filing requirements contained in Section 7 before they can function in behalf of employees while leaving employers' associations free to carry on their activities on behalf of employers without meeting such requirements is a clearly discriminatory differentiation in the treatment of groups similarly situated in respect of the subject matter dealt with by the statute and violates the constitutional guarantee of equal protection of the law. *Hartford Company* v. *Harrison*, 301 U. S. 459, *Bethlehem Motors Company* v. *Flint*, 256 U. S. 421; *Connolly* v. *Union Sewer Pipe Company*, 184 U. S. 450.

There are, of course, differences between employers' associations and labor organizations, but these differences do not afford a basis for distinction in treatment under the statute. Indeed, reliance upon these differences to justify the distinction made by the statute would constitute nothing less than an attempt to justify class legislation. As was stated by the

Supreme Court in *Frost* v. *Corporation Commission*, 278 U. S. 515:

> "'• • • Mere difference is not enough; the attempted classification must always rest upon some difference which bears a reasonable and just relation to the act with respect to which the classification is proposed, and can never be made arbitrarily and without such 'basis'. *Gulf Coal and Santa Fe Railway* v. *Ellis*, 165 U. S. 150, 161 • • •." (At pp. 522, 523)

It should be noted also that no other type of non-profit, voluntary, unincorporated association is required to comply with Section 7 of the Alabama statute. The statute represents a singling out of labor organizations for the imposition of special requirements at variance with the constitutional guarantee of equal protection of the law.

POINT V

THE RECORD PRESENTS SEVERAL CASES OR CONTROVERSIES, INVOLVING THE FEDERAL ISSUES RAISED HEREIN, WITHIN THE MEANING OF ARTICLE III, SECTION 2, OF THE FEDERAL CONSTITUTION.

This Court requested counsel "to discuss in their briefs and on oral argument the question whether the record presents one or more cases or controversies within the meaning of Article III, Section 2, of the Constitution, and to state the precise facts giving rise to and the issues involved in each such case or controversy, if any."

As stated above (*supra*, p. 5) this case was brought by petitioners under the Alabama Uniform Declaratory Judgments Act (Title VII, Sections 156-168, Alabama Code of 1940) * to secure a judicial declaration that Sections 7 and

* The pertinent provisions of the Alabama Declaratory Judgments Act read as follows:

"156. Scope. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

"157. Power to construe, etc. Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status or other legal relations are affected by a

16, among others, were, as threatened to be applied to petitioners, unconstitutional and to restrain enforcement thereof. In the Circuit Court for the Tenth Judicial Circuit of Alabama, the demurrer of the defendants resting in part upon the ground that certain of petitioners lacked capacity to maintain the suit and that no controversy existed (R. 27, 29) was overruled (R. 34) and both the Circuit Court and the Supreme Court handed down declaratory judgments (R. 201, 220).

Petitioner Congress of Industrial Organizations has 60,000 members in Alabama and 32,000 members in Jefferson County (R. 2, 34-35, 142). Petitioner Alabama State Industrial Union Council is an intermediate body composed of voluntary associations functioning in Jefferson County, Alabama; petitioner Carey Haigler is secretary of said Alabama State Industrial Union Council and a resident of Jefferson County, Alabama (R. 141-142, 151-152, 3, 35). Petitioner United Steelworkers of America has 18,000 members in Jefferson County, Alabama (R. 3, 35); petitioner Local 1015 of the United Steelworkers of America has many members who are residents of Alabama, functions in Jefferson County, Alabama, and is a certified union under Section 9 of the National Labor Relations Act (R. 6, 36, 146, 146-147). Petitioner International Union of Mine, Mill and Smelter Workers is a labor organization which functions in many states and has 14,000 members in Jefferson County who are residents of Alabama (R. 144-145). Petitioner Textile Workers of America functions and has members in Alabama (R. 145-146). Petitioner Local Union 2382 of the United Steelworkers of America has numbers of members in Jefferson County and has been certified under Section 9 of the National Labor Relations Act (R. 6, 36, 148-149), and petitioner Local 2971 of the United Steelworkers of America has a substantial membership in Jefferson County, Alabama (R. 6, 36, 147). The individual petitioners are all officers of petitioner labor organizations (R. 147, 148, 149, 173, 2, 34-35, 3, 35).

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statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder."
"161. When refusal proper. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding."

All necessary elements are present for the Court to determine the constitutionality of the provisions of the Alabama Act here challenged. Petitioners are directly and adversely affected by the Act and the respondents are charged with its enforcement. The Act if permitted to stand will result in the infringement of petitioners' constitutional rights. In no sense can it be said that a judgment determining the constitutionality of the Act would be advisory in nature. On the contrary, such a judgment would be determinative of valuable legal rights asserted by petitioners which are threatened with imminent invasion by the respondents under the color and authority of the Act. The relief sought is a definitive adjudication of the disputed constitutional right of petitioners to be free from the prohibitions and regulations set forth in the Act. Characteristic activities of petitioner labor organizations, necessary to their every-day functioning, are proscribed by a statute which the State is preparing to enforce (R. 161-162, 16, 47, 177-190).

A justiciable controversy clearly exists between petitioner labor organizations and respondents with respect to the requirements of the statute in question (R. 18, 48-49). Thus, petitioner labor organizations were faced with the question of whether to file their constitutions and by-laws within sixty days of the passage of the act as required by Section 7. They are faced within the question of whether to file the annual financial reports as required by Section 7 of the statute. Petitioner labor organizations believe that the requirements are unconstitutional as infringements upon their constitutional rights. Respondents are charged with the duty of enforcing the law (R. 15, 46). Failure of petitioner labor organizations to comply will subject them to the civil and criminal penalties provided by Section 18 of the statute. But even if petitioners are not immediately prosecuted under the Act, their failure to comply will subject them to very serious handicaps in carrying out their functions. Employers will undoubtedly refuse to deal with them further, their own members will undoubtedly cease to be active and may even give up their membership for fear of incurring penalties and the petitioner unions will unquestionably find it difficult if not impossible to collect dues and assessments. In short, petitioner labor organizations run the risk of destruction by refusing to comply

with Section 7 of the statute on the ground that it invades their constitutional prerogatives.

The same is true of Section 16 of the statute, making it unlawful for any executive, administrative, professional or supervisory employee to be a member in or be accepted for membership by any labor organization. Petitioner labor organizations admit such groups of employees to membership (R. 123-124, 213, at pp. 4-5, 216, 218 at pp. 4-5; R. 14, 44) and believe that this statutory prohibition is an illegal invasion of their constitutional rights. Respondents are charged with the enforcement of the law. Violation of the prohibition carries with it civil and criminal penalties. But here again even if petitioners are not immediately prosecuted, the very existence of the statutory prohibition interferes with the normal functioning of petitioner labor organizations in that it puts a stop to their efforts to recruit certain employees. The object of all labor organizations is to secure the membership of all persons who are eligible under their constitutions and by-laws to join. The question of who is supervisory and who is not is so vague that many persons will refuse to join labor organizations for fear that they might be regarded as supervisory or administrative employees. If in fact this prohibition is unconstitutional, the damage thus suffered by labor organizations is not only wholly unnecessary but if it is permitted to continue may prove to be irremediable. A decisive check upon the organizational activities of a labor organization is difficult to overcome.

The conflicts presented must certainly be seen to be not merely theoretical nor academic. The existence of the statute itself constitutes an ever-present impending threat to the exercise of basic constitutional rights of petitioners and their members (R. 132-133, 150). It is clear that labor organizations cannot wait until prosecutions are instituted under the statute to have its constitutionality determined. The statute itself, whether enforced or not, is a grave threat to the proper functioning of labor organizations. No essential element is lacking for the Court to decide the issues presented by the statute which would be supplied by awaiting particular instances of infraction. The statute creates a controversy as sharp and as clear in all its essential elements as though there were now before the Court a situation in which petitioners were being pros-

ecuted for violation of provisions of the statute. There is here present "a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceding upon the facts alleged;" • • • "the dispute relates to legal rights and obligations;" • • • "the dispute is definitive and concrete, not hypothetical or abstract;" and there exists "a real and substantial controversy admitting of specific relief through a decree of a conclusive character." *Aetna Life Insurance Company* v. *Haworth*, 300 U. S. 222. See also *Adams Mfg. Co.* v. *Storen*, 304 U. S. 307; *Wright* v. *Central Kentucky Natural Gas Co.*, 297 U. S. 537; *Colorado National Bank of Denver* v. *Bedford, Treasurer*, 310 U. S. 41.

• • •

The provisions of the Alabama statute here challenged constitute a portion of a growing body of legislation which is directed at labor organizations. All of this legislation has emerged from states which have either been freshly industrialized or, in fact, have within their confines only scattered industries. The legislation does not spring from a developed experience with those practices of labor organizations which the legislation purports to regulate. On the contrary, the states in which this legislation has emerged have assumed and anticipated evils which have not moved more industrialized states to apply similar sanctions. Indeed, where experience has accumulated in the states now sponsoring anti-union legislation, it is precisely in the area where experience has developed that regulation has been withheld. Thus in Alabama the well-established railroad labor organizations whose functioning should logically furnish a mirror for any abuses of labor organizations have been exempted from the statute here challenged.

A broad view of the legislative picture yields definite conviction that the legislation of which the challenged provisions are typical has been sponsored to weaken labor organizations as such rather than to protect the public from their abuses. Petitioners are concerned with the growth of this crusade to sterilize the exercise of rights which we are convinced are vital to the national interest. If newly-industrialized states are to be permitted to prevent the existence and functioning of labor organizations within their confines on the basis of anticipated evils, we fear that the healthy and important

process of labor union formation and functioning may be quarantined in wide areas of our country. We believe that the legislative devices whereby this process is being furthered ignore basic constitutional values which this Court has taken within its stewardship. Moreover if each state is to be permitted to erect a toll house for the collection of a price upon payment of which labor organizations may function, we will jeopardize the solution of problems in this area which can only have a federal solution. The functioning of labor organizations and their relationships to employers sensitively touch the very springs of a federal economy. The existence of the provisions here challenged serves to checker-board this field, to place a basically interstate problem upon an artificial state and regional level, to set vast areas of this country in which labor unions have been successfully integrated into industrial society at a competitive disadvantage and to reopen in those areas problems which have now happily received a definitive solution.

The requirements of the Constitution as well as the practical needs of a federalized economy both reject the challenged provisions.

• • •

CONCLUSION

It is respectfully submitted that Sections 7 and 16 of the Alabama Act are contrary to the Constitution of the United States and that the decision of the Alabama Supreme Court should be reversed.

Respectfully submitted,

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